Home (1947) Department

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No. SERIES.

G.O. No. 4346

Dated 26th November 1947

[Despatch Abstract.]

Passport - Domicile - Interpretation of the word 'domicile' used in passport declaration form - Further instructions from Government of India - Recorded.

GOVERNMENT OF MADRAS

(Abstract)

PASSPORT - Domicile - Interpretation of the word 'domicile' used in passport declaration form - Further instructions from Government of India - Recorded.

Home Department

G.O.Ms.No.4346, Dated 26th November 1947,
Read the following:--

G.O.Ms.No.3187 Home, dated the 12th August 1947
Letter from the Government of India in the Ministry of External Affairs and Commonwealth Relations No.D.7797-PVI/47, dated 3rd November 1947.

Sub: Interpretation of the term 'domicile' used in the Passport declaration form.

I am directed to refer to your letter No.F.3(1)/47-PSP., dated the 26th July, 1947 and to state that for the purposes of the passport rules, domicile will be determined according to the ordinary law of domicile. Rules for the application of the law domicile will be found set out in Part II of the Indian Succession Act. The rules in Appendix B to Schedule IV of the Superior Civil Services Rules, with the exception of rules 10 and 11, are based on the law of domicile as contained in Part II of the Indian Succession Act and may be referred to for easy guidance. The rules will have to be applied to the circumstances of each case for the purpose of determining in a summary manner whether the claim of the European or Anglo-Indian concerned to British domicile can be sustained.

2. In the case of each European or Anglo-Indian the first question to consider is the question as to what is his domicile of origin. This is to be determined in accordance with the rules contained in sections 7 and 8 of the Indian Succession Act. Under section 9, the domicile of origin would prevail until a new domicile has been acquired. It is, however, possible for the European or Anglo-Indian concerned to change his domicile of origin and acquire a new domicile by taking up his fixed habitation in a country which is not that of his domicile or origin. However, as pointed out in the Explanation to section 10, a man is not to be deemed to have taken up his fixed habitation in India merely by reason of his residing there in His Majesty's military, navel or air force service or in the exercise of any profession or calling. The acquisition of a new domicile does not simply depend on the residence of the party: ~~a new domicile does not s~~ the fact of residence must be accompanied by an intention of permanently residing in the new domicile and of abandoning the former. If this criterion is satisfied, it will be taken that the person concerned has acquired a new domicile in place of his domicile of origin. A new domicile once acquired continues until the former domicile has been resumed or another has been acquired (section 13 of the Indian Succession Act). The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin, subject to the exception mentioned in section 14, (see also Sec. 17).

3. As regards the first category mentioned in paragraph 2 of your letter, the question is not where the father or grandfather of the European or Anglo-Indian was born but whether his father was at the time of the child's birth domiciled in the United Kingdom. If the father was so domiciled at that time the child will be deemed to have ~~have~~ United Kingdom as his domicile of origin and this domicile will continue unless he acquired a new domicile in India. To determine this the rule contained in sec. 10 of the Indian Succession Act, read with the Explanation contained therein, should be applied. If the persons concerned has acquired a residence and properties in India and has no residence in England and if he has not even visited the United Kingdom and has been educated in India, these facts will

will be taken as good evidence of an intention to make India as his permanent home. It is of course not possible to enumerate all possible cases in which a domicile will be deemed to have been acquired in India, and all cases in which domicile will not be deemed to have been acquired. The matter will depend on the circumstances of each case. The test to be applied is whether the person ~~xx~~ concerned has taken up his fixed habitation in India in place of his domicile of origin. As regards category (ii) the fact that his relation is residing in the United Kingdom does not prove that the person concerned is domiciled in the United Kingdom. The question of his domicile depends on the intention or otherwise on his part to make India his permanent home and does not depend on the intention of his relations. As regards category (iii), the fact that the European or Anglo-Indian has on more than one occasion described himself as domiciled in India is prima facie evidence that he is so domiciled and if he wishes to contend otherwise it is for him to bring out facts to prove that the statements previously made by him were wrong.

4. The question of a man's domicile depends not only on his intention but also on actual residence. The fact that a man domiciled in India wants now to go back to the United Kingdom to reside there permanently would not make United Kingdom his domicile, unless he acquires that domicile by actual residence there in pursuance of his intention.

5. I am also to add that as pointed in section 7 of the Indian Succession Act, the domicile of origin of every person of legitimate birth is the country in which at the time of his birth his father was domiciled, or, if he is a posthumous child, in the country in which ~~x~~ his father was domiciled at the time of the father's death: On the other hand, as laid down in section 8, the domicile of origin of an illegitimate child is the country in which at the time of his birth the mother was domiciled. Therefore, the last sentence of letter from the Government of India in the late Department of External Affairs and Commonwealth Relations No.D.61-30-PVI/47, dated the 23rd July 1947 applies more to the domicile of origin of the applicant than to his existing domicile.

To all Passport Issuing Authorities in India. for information and guidance.

O R D E R:

Recorded.

By Order of His Excellency the Governor)

M. Gopal Menon,
Under Secretary to Government.

To the Commissioner of Police, Madras
To all District Magistrates.

(True copy)

R. Thiagarajan 12.
Office Assistant,
Madras Record Office.

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